RAJALETCHUMI & ANOR. v. ANGELA SOH OON KAY

[F.C. (Azmi L.P., Gill and Ali F.JJ.) November 20, 1970]

[Kuala Lumpur — Federal Court Civil Appeal No. 62 of 1970]

Damages — Personal injuries — Facial injuries — Special damages for plastic surgery.

The respondent had been injured in a road accident and had suffered injuries on her face which left scars which in the opinion of her family doctor needed plastic surgery. She subsequently went to New York and plastic surgery was done on her. The learned trial judge awarded her $10,000 as general damages and also awarded part of the cost of the journey to New York and the expenses she incurred there as special damages. The appellant appealed against these awards alleging that they were manifestly excessive. There was evidence that the plastic surgery could have been performed by a qualified surgeon in Singapore at considerably less cost.

Held: (1) the amount of $10,000 awarded for general damages in this case was manifestly excessive as the injuries suffered by the respondent were comparatively minor injuries and the general damages should be reduced to $5,000;

(2) as the medical expenses were reasonably incurred for medical treatment and as the learned judge had only awarded part of the actual expenses incurred, the appeal against the award of special damages would be dismissed.

Cases referred to:-

(1) *Symes* v. *Ling Ngan Ngieng* [1966] 2 M.L.J. 149.

(2) *Rubens* v. *Walker* [1946] S.C. 215.

FEDERAL COURT.

M. J. Mathew for the appellants.

M. S. Naidu for the respondents.

Cur. Adv. Vult.

Azmi L.P.: The question to be decided in this appeal is whether the general damages of $10,000 for injuries suffered by the plaintiff and the special damages of $9,803.60 were manifestly excessive as alleged by the defendants before us.

The plaintiff who was a girl of 16 years of age at the time of the accident suffered the following injuries: —

(1) A ¾" vertical linear scar above the inner end of the right eyebrow;

(2) A 1¼" abraded scar ¼" above and parallel to the right eyebrow;

(3) A ¾" linear scar involving the outer ½" of the edge of the right upper eyelid and continuing upwards on the outer edge of the orbit for ¼";

(4) A ¼" linear scar medical to the inner edge of the right eye;

(5) A ¼" abraded scar of the inner part of the right upper eyelid; and

(6) A 2" curved linear scar running vertically at the junction of the right forehead and right temporal region disappearing into the hairline.

These injuries had left scars which in the opinion of the plaintiff's family doctor needed plastic surgery. The most disfiguring scar and injury was the third injury which prevents the plaintiff from closing her right eye properly. Another bad disfiguring scar and injury is scar No. 5 which is above the edge of the right eyelid. The scar left by injury No. 1 stood out quite prominently. These disfiguring scars would remain permanent according to the doctor unless plastic surgery was employed. The plaintiff subsequently went to New York and plastic surgery was done by a Dr. Herbert Conway. Although according to Dr. Conway the plastic operation was satisfactory it is obvious that the residual scars still remain on her face.

The learned trial judge, following the award made by Gill J. (as he then was) in *Symes* v. *Ling Ngan Ngieng*[1] awarded $10,000 as general damages to the plaintiff. That was a case in which the plaintiff was a child who was knocked down by a motor-car whilst crossing a road. As a result of the accident she had a deep lacerated wound six inches long running across her face involving the nasal bone and the lower margin of the left orbit. She was left with a permanent disfigurement of her face by reason of two large and prominent scars. There was also a scar causing her left nostril to narrow as it went down. This had caused a certain amount of blocking of the left nostril which would obstruct the normal flow of the nasal discharge during a cold. Furthermore, the plaintiff's mouth was slightly crooked to the left when she smiled because the muscles of her right cheek did not pull up the right angle of the mouth. The orthopaedic surgeon in that case had expressed the opinion that plastic surgery might reduce the facial disfigurement to some extent, but the scars would still remain. The estimated cost of such plastic surgery was said to be in the neighbourhood of $5,000. In assessing the damages the judge pointed out that, apart from pain and suffering, the main consideration was the disfigurement of the plaintiff's face. The judge went on to say that the plaintiff was a good-looking child, that she looked bright and cheerful even after her disfigurement but that there was no doubt that the scars on her face would be a source of embarrassment to her throughout her life. He further went on to say that it was difficult to say to what extent the scars would affect her marriage prospects when she grew up, but that they would have some effect could not be doubted.

It would seem clear that the injuries sustained by the plaintiff in the present case are nothing compared to the injuries suffered by the plaintiff in *Symes'* case. They were multiple abrasions and lacerations of the right side of the face, around the right orbit and right side of the forehead. As Mr. O. M. O'Malley, the surgeon, stated in his medical report on the plaintiff dated November 16, 1964, her scars are not very noticeable and the only resulting disability is cosmetic and this is very slight. The photographs of the plaintiff taken before the plastic surgery was done do not show any very great disfigurement of her face so as to make her look ugly. In awarding damages in *Symes'* case Gill J., apart from taking into account the pain and suffering that the plaintiff must have undergone and the permanent disfigurement of her face which was not likely to disappear completely even by plastic surgery, undoubtedly had in mind the estimated cost of plastic surgery which would require to be done. Even assuming that he did not take into consideration the cost of such plastic surgery, the amount of $10,000

awarded in this case, in my judgment, is manifestly excessive. As I have already said, the injuries suffered by the plaintiff in the present case were comparatively minor injuries. In the circumstances, I would reduce the general damages awarded in this case to $5,000.

The next question that we have to consider is whether the learned trial judge was right in awarding the special damages to cover the cost of the journey made by the girl to New York and the expenses she incurred for the medical fees she paid to the surgeon and for her hospitalisation there. It was urged on behalf of the defendants that this girl could have the same operation if not in Malaya then in Singapore where the cost of such operation would be considerably less, and there was a qualified surgeon in Singapore who could have done the necessary operation. If she had the surgery done in Singapore the cost of such surgery and incidential expenses would not exceed $1,000.

In allowing part of the special damages for the treatment of the plaintiff in New York the learned judge expressed the view that it could not be reasonably expected that she would allow herself to be operated by a surgeon who had little or no experience in plastic surgery. It was pointed out to us that the learned judge, however, in coming to that decision had forgotten that he had the information that there was a qualified surgeon in Singapore who could do this operation. With respect, in my view, this question should be considered on the basis whether these medical expenses have been reasonably incurred for medical treatment even though it transpires that the expert advice upon which he acted was mistaken and the treatment was in fact unnecessary. (See *Kemp and Kemp* — The Quantum of Damages Vol. I, 3rd Edn. at page 14).

In *Rubens* v. *Walker*,[2] at page 216, Lord Patrick said:

> "In a former and very similar case — *Buntine* v. *Caledonia Stevedoring Co.* June 15, 1944, unreported — I followed the dictum of Lord Collins in *Clippens Oil Co.* 1907 S.C. (H.L.) 9 at page 14, where he said: 'The wrongdoer is not entitled to criticise the course honestly taken by the injured person on the advice of his experts, even though it should appear by the light of after events that another course might have saved loss. The loss he has to pay for is that which has actually followed under such circumstances upon his wrong.' See also *per* Lord Dunedin in *S.S. Baron Vernon*, 1928 S.C. (H.L.) 21 at p. 28. I said then, and see no reason to modify the statement, that this passage must surely apply where a pursuer is reduced by a defender's fault to a state in which medical diagnosis of his condition is difficult and fraught with the chance of error. The pursuer is entitled to act on the advice of his experts, and the defender must pay the costs of that acting.... In my opinion it is a reasonable and probable consequence of a wrongdoer's breach of duty that a person hurt will incur expense in following the treatment prescribed by reputable experts employed by him to cure him. Each case must be decided on its merits. The result might be very different if the injured person acted on the advice of a quack, or if, considering all the advice he had received, no reasonable person would have taken the course he did."

Keeping the above principles in mind and also the fact that the learned trial judge had awarded only part of the actual expenses spent by the parents for the operation in New York, I would dismiss the appeal against the award of special damages. There will be no order as to costs of this appeal but the respondent will get half of her costs in the court below.

Gill and **Ali FJJ.** concurred.

Order accordingly.

Solicitors: *M. J. Mathew; Braddell & Ramani.*